BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas and Electric Company for Authority to Issue Recovery Bonds for Fire Risk Mitigation Expenditures Pursuant to Article 5.8 of the California Public Utilities Code.. (U 39-E)	Application 21-02-020 (Filed February 24, 2021)

OPENING BRIEF OF THE UTILITY REFORM NETWORK

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TABLE OF CONTENTS

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Pursuant to the schedule set forth in the *Assigned Commissioner's Scoping Memo and Ruling* ("Scoping Memo") issued April 5, 2021, The Utility Reform Network ("TURN") submits this opening brief on issues associated with the application of Pacific Gas and Electric Company ("PG&E") for the issuance of securitized bonds subject to Section 850.1.

1. Introduction

PG&E has the benefit of being second in line when it comes to presenting securitization proposals pursuant to Assembly Bill (AB) 1054. On many issues, PG&E also saw fit to include proposals that appear to be generally consistent with the Commission-adopted outcomes on issues that were disputed in the earlier securitization application of Southern California Edison Company (SCE) and resolved in D.20-11-008. There remain, however, several important issues the Commission must resolve.

Under the heading of "cost allocation" issues below, TURN addresses two significant issues. First, PG&E must be directed to make regular updates of the cost allocation factor applicable to the fixed recovery charges and other securitization-related costs arising from this application, not just for changes in sales that occur over the next 25 years, but also changes the Commission may adopt in future General Rate Case (GRC) Phase II proceedings, where such allocation and rate design issues are regularly considered and resolved. While such updates were a prominent element of PG&E's original proposal here, the utility now proposes that future updates will be limited to changes in sales.

Second under the cost allocation heading is PG&E's proposed treatment of customers who participate in the California Alternative Rates for Energy (CARE) or Family Electric Rate Assistance (FERA) programs. Section 850.1(i) exempts such customers from paying securitization-related costs. PG&E proposes to create the appearance of an exemption, but to raise other rate elements for these customers so, in the end, they would pay more despite the exemption.

And under the heading of achieving reduced consumer rates to the maximum extent possible, TURN addresses issues associated with PG&E's proposal to treat construction work in progress (CWIP) as indistinguishable from capital expenditures in rate base for purposes of the securitization transaction. As TURN explains, such an approach may be impermissible under the statute's description of capital expenditures eligible for securitization under AB 1054.

Finally, TURN recommends the Commission require a stand-alone Tier 3 Advice Letter for PG&E's presentation of changes to its authorized test year 2020 GRC revenue requirement that will result if this securitization proposal is adopted. PG&E proposed to make its showing as part of its Annual Electric True-Up (AET) advice letter, where it would merely be one of dozens of accounts and adjustments presented for review. TURN submits that changes of this type and magnitude warrant a separate advice letter to better ensure interested parties and the Commission fully understand what PG&E has proposed and why.

2. Issue 1 -- Have the recovery costs sought to be reimbursed been found to be just and reasonable, in compliance with Public Utilities Code § 850.1(a)(1)(A)(i)?

TURN is not addressing this issue in this opening brief.

3. Issue 2 -- Are the proposed Recovery Bonds just and reasonable, in compliance with Public Utilities Code §§ 850.1(a)(1)(A)(ii)(I)?

TURN is not addressing this issue in this opening brief.

4. Issue 3 -- Are the proposed Recovery Bonds consistent with the public interest, in compliance with Public Utilities Code §§ 850.1(a)(1)(A)(ii)(II)?

TURN is not addressing this issue in this opening brief.

5. Issue 4 – Would the proposed Recovery Bonds reduce consumer rates to the maximum extent possible compared to traditional utility financing mechanisms, in compliance with Pub. Util. Code § 850.1(a)(1)(A)(ii)(III)?

PG&E's reliance on a Commission Finance Team for review and either approval or rejection of the final terms Wildfire Hardening Recovery Bonds appears to be generally consistent with the approach adopted in D.20-11-007 for Southern California Edison Company (SCE) in its first AB 1054 securitization application. On that basis, TURN raises here only concerns regarding a specific and more discrete element of PG&E's proposal.[1]

5.1. The Commission Must Determine Whether Inclusion of Construction Work In Progress (CWIP) In The Amounts To Be Recovered Through Wildfire Hardening Recovery Bonds Is Consistent With Section 8386.3(e), And The Requirement to Use Bonds to Reduce Customer Rates "To The Maximum Extent Possible."

In its application and testimony, PG&E asserts that for purposes of determining whether capital expenditures are eligible for recovery through issuance of recovery bonds (here, "Wildfire Hardening Recovery Bonds"), the Commission need only consider whether the capital expenditure has been approved by the Commission and incurred by PG&E. It would not matter whether the capital expenditures are "in service in rate base or recorded as construction work in progress ('CWIP')."[2] PG&E's application and testimony provide no further support for this position beyond the footnoted assertions.

TURN submits that PG&E's approach may not be consistent with at least two provisions of AB 1054. First, the CWIP amounts may not be eligible for bond recovery under Section 8386.3(e), which refers specifically to capital expenditures that would otherwise be eligible for inclusion in "rate base." Second, including CWIP reduces the overall reduction to rates achieved through

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[1] TURN also considered including here the discussion of issues regarding PG&E's inadequate approach to exempting CARE and FERA customers from securitization-related costs, but instead has included that issue in Issue 5, below.

[2] PG&E Application, p. 9, fn. 20; Ex. PG&E-01 (PG&E Testimony, Chapter 1), p. 1-11, fn. 24.

securitization, as compared to including only amounts already in rate base. However, it is not clear on the record here whether PG&E's approach makes a material difference in terms of the rate reduction achieved through this "Initial AB 1054 Securitization." Therefore, should the Commission determine that CWIP amounts are eligible for bond recovery under Section 8386.3(e), TURN proposes no change to the transaction subject to this application, but recommends the Commission direct PG&E to make a more complete showing if it proposes to include CWIP in any subsequent securitization application subject to AB 1054.

PG&E's footnoted assertion relies on Section 8386.3(e), which states:

> The commission shall not allow a large electrical corporation to include in its equity rate base its share … of the first five billion dollars … expended in aggregate by large electrical corporations on fire risk mitigation capital expenditures included in the electrical corporations' approved wildfire mitigation plans. An electrical corporation's share of the fire risk mitigation capital expenditures and the debt financing costs of these fire risk mitigation capital expenditures may be financed through a financing order pursuant to Section 851, subject to the requirements of that financing order.

The first sentence of Section 8386.3(e) refers to capital expenditures that would otherwise be eligible for inclusion in a utility's "equity rate base." Capital expenditures that are recorded as CWIP do not fall into that category – those amounts are not included in rate base until the associated plant enters service and becomes "used and useful." The second sentence of Section 8386.3(e) clearly builds on the first, such that the reference to "these fire risk mitigation capital expenditures" can only be reasonably understood to refer to the capital expenditures that would otherwise be eligible for inclusion in "rate base" – again, capital expenditures that are not CWIP. Thus, it appears on the face of Section 8386.3(e) that amounts recorded as CWIP may not be eligible for financing through a financing order pursuant to Section 851.

The treatment of CWIP as eligible for recovery through issuance of Wildfire Hardening Recovery Bonds would also seem to run afoul of Section 850.1(a)(1)(A)(ii)(III) and its requirement that reliance on recovery bonds serve to "reduce, to the maximum extent possible, the rates on a present value basis…" Capital expenditures that are included in rate base but excluded from an equity return will earn a 4.17% return, the current cost of debt. On the other hand, capital expenditures that are recorded as CWIP earn an allowance for funds used during construction (AFUDC) of approximately 3.8% until they are recorded to plant and added to rate base.[3] In order to maximize the rate reduction achieved by relying on recovery bonds for PG&E's $3.21 billion share of the AB 1054-eligible capital expenditures, the utility would want to exclusively include capital expenditures in rate base to achieve the greatest savings (the 4.17% debt return as compared to the 2.43% estimated securitized bond interest). To the extent PG&E is including capital expenditures recorded as CWIP rather than rate base, it is achieving a smaller incremental savings (the 3.8% AFUDC rate as compared to the 2.43% bond interest). And by including CWIP capital expenditures, PG&E is reducing the total savings to ratepayers.

In discovery responses, PG&E asserted that the bond interest rate still produces savings as compared to the AFUDC rate, and delaying securitization of capital expenditures in CWIP would lead to "higher customer costs."[4] PG&E's analysis is at best incomplete, and may be inaccurate. TURN does not deny that the 3.8% AFUDC rate is higher than the 2.43% estimated bond interest rate. And if the statutory directive were merely to achieve "savings," PG&E's position might have merit. But where, as here, the statute requires the bonds be structured in a manner to achieve rate reductions "to the maximum extent possible," then the transaction should include only capital expenditures already in rate base, rather than CWIP with its lower return. This approach is consistent with the calculations PG&E included in its testimony, for which the utility "assumed all

[3] Ex. TURN-02 (PG&E Response to TURN Data Request 2), Q/A 3.

[4] *Id.*, Q/A 3 and 5.

$1.19 billion of capital expenditures were recorded to plant at the time of securitization, and none were in CWIP."[5]

Under PG&E's approach, the amount of bond-financed capital expenditures that are recorded as CWIP when the Finance Order issues could be substantial. As of the end of 2020, the total Community Wildfire Safety Program (CWSP) "spend" for 2020 was approximately $655 million, of which the CWIP balance was approximately $124 million.[6] While PG&E has designated "confidential" the figures recorded through March 2021, the ratio between "spend" and CWIP is approximately the same. If the same approximate ratio applies at the time of issuance of the proposed securitization, the Commission can reasonably expect the CWIP figure to be in excess of $200 million. Even if the CWIP balance at the time of the securitization's issuance remains closer to the $124 million year-end 2020 figure, it would still be a substantial amount.

At this time TURN is not proposing any change to PG&E's proposed transaction due to the utility's proposed inclusion of CWIP. In informal discussions, PG&E has indicated that it intends to include capital expenditures that are already in rate base to the maximum extent possible in its securitization, which would reduce the need to rely on CWIP. Furthermore, TURN recognizes that CWIP status is intended to be temporary, and the capital expenditures recorded as CWIP should eventually enter rate base, at which point the avoided return would be the higher 4.17 percent cost of debt figure. Due to the accelerated schedule of this proceeding and the limited resources available to TURN at the time PG&E's application arrived and needed review and analysis, TURN is unable to determine whether PG&E's proposed approach would have a material impact on the rate reductions achieved through its first AB 1054 securitization.

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[5] *Id.*, Q/A 3.a.

[6] *Id.*, Q/A 4.

However, TURN urges the Commission to direct PG&E to make a more complete showing in subsequent securitization applications, should the utility seek to include capital expenditures recorded as CWIP. The utility should be positioned to make reasonable assumptions regarding how much of the total capital expenditures would be recorded as CWIP at the time of securitization, and how long on average those capital expenditures are likely to remain as CWIP before being recorded to plant and becoming part of rate base. Such assumptions would permit PG&E to present at least alternative calculations that estimate the nominal and present value savings from including CWIP as part of the securitization, as compared to relying solely on capital expenditures already in rate base. Such a showing would assist the parties and, ultimately, the Commission to better understand the impact of including CWIP.

6. Issue 5 – What is the appropriate customer allocation for implementing a fixed recovery charge?

TURN addresses two sets of issues that it believes fit within this issue as set forth in the Scoping Memo. The first addresses customer allocation in terms of inter-class cost allocation. The second concerns the treatment of the statutory exemption for customers enrolled in either the California Alternative Rates for Energy (CARE) or Family Electric Rate Assistance (FERA) programs. TURN is not certain where the latter best fits in the issues as laid out in the Scoping Memo, and has selected Issue 5 as the best fit.

6.1. The Commission Should Permit Updates To The Wildfire Mitigation Allocation Factor Applicable To This Securitization, Rather Than Lock In A 25-Year Allocation.

One of the key issues before the Commission in this securitization application is how to treat inter-class allocation of the Wildfire Mitigation costs that will be securitized and recovered through bonds. There now seems to be general agreement that the specific Wildfire Mitigation cost allocator included in the pending PG&E GRC Phase II settlement (in A.19-11-019) should be applied to the allocation of the Wildfire Hardening Fixed Recovery Charge (WHFRC) that would be adopted here, rather than the distribution allocator PG&E originally proposed. There remains the question of whether the Wildfire Mitigation cost allocator that comes out of the Phase II settlement should be updated to reflect outcomes of future revenue allocation and rate design proceedings, or remain fixed for the entire 25-year life anticipated for the bonds, without such updates. PG&E had proposed such updates for the distribution allocator originally included in its testimony. TURN urges the Commission to retain a similar approach for the Wildfire Mitigation allocator.

The cost allocation issue to be resolved here has emerged from two concurrent proceedings, that is, the instant AB 1054 securitization application, and Phase II of PG&E's GRC.

PG&E's AB 1054 securitization application and testimony proposed to rely on a distribution allocation factor for interclass allocation of the WHFRCs, with updates at least annually to reflect changes in sales and any change to the allocation factor itself that might result from a PG&E revenue allocation or rate design proceeding, such as Phase II of a GRC.[7] The updates would occur as part of the "Routine True-Up Mechanism Advice Letters" that are an essential part of PG&E's proposed process, with the allocation of WFRC modified as needed to reflect "the most recently adopted distribution factors."[8] PG&E's position was very clear – such updates would include adjustments to reflect "PG&E's latest estimate of sales" <u>and</u> "[r]evenue allocation factors."[9] According to PG&E's outside expert on securitization transactions, such a true-up for adjustments to the applicable revenue allocation factors is a regular element of utility securitizations:

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[7] PG&E Application, pp. 5-6, 18, and 33 (Item 7), and Attachment A - Proposed Financing Order, pp. 12-13, 54, and Attachment 1 (Description of the Cash Flow Model), p. 1; Ex. PG&E-6 (PG&E Testimony, Chapter 6), p. 6-2.

[8] Ex. PG&E-1 (PG&E Testimony, Chapter 1), p. 1-23.

[9] *Id.*, p. 1-26; Ex. PG&E-5 (PG&E Testimony, Chapter 5), p. 5-4.

> Utility securitizations have used a number of approaches to allocate the securitization charges associated with the debt service and related ongoing transaction costs among customers. Many recent transactions have allocated the securitization charges among customer classes based on a set of allocation percentages established for each customer class <u>where these percentages, if appropriate, can be revised from time to time</u>.[10]

PG&E explained that its original proposal sought

> to apply the same distribution factors to allocate revenue that would have been used to establish the rates if these costs had not been securitized. Distribution allocation factors will be updated at least annually in Routine True-Up Mechanism Advice Letters to reflect changes in sales and any changes to these factors that may occur as a result of a PG&E revenue allocation or rate design proceeding (such as Phase II of the GRC).[11]

PG&E's proposed tariff language was consistent with its testimony position – the adjustments made through the Routine True-Up Mechanism Advice Letter process "will be based on the following: (1) the most recent test year sales; (2) the most recent adopted revenue allocation factors…."[12]

TURN's protest noted that PG&E's securitization application arrived during the midst of an ongoing PG&E GRC Phase II proceeding, and that the appropriate allocation and collection mechanism for Wildfire Mitigation costs generally was an issue in that proceeding.[13] In its reply to protests, PG&E indicated a willingness to discuss use of an allocation methodology different than its proposed distribution allocator, based on developments in the ongoing Phase II proceeding, for

[10] Ex. PG&E-2 (Testimony of Katrina Niehaus of Goldman, Sachs & Co.), p. 2-11 (emphasis added). Ms. Niehaus's qualifications highlight her experience assisting numerous utilities and states through the securitization process as an advisor or underwriter. Ex. PG&E-07 (PG&E Testimony, Qualification of Witnesses), p. AppA-1.

[11] Ex. PG&E-6 (PG&E Testimony, Chapter 6), p. 6-2.

[12] Ex. PG&E-5 (PG&E Testimony, Chapter 5), Exhibit 5.1 – Electric Preliminary Statement, p. 5.1-2 (Section 4 – Wildfire Hardening Fixed Recovery Charge Adjustments).

[13] TURN Protest, pp. 6-7.

incorporation into the financing order in this proceeding.[14] PG&E also reiterated that with its originally proposed distribution allocation factor, it anticipated making updates to the adopted allocation factors "to reflect changes in sales and any changes to these factors that may occur as a result of revenue allocation or rate design proceedings, such as and including the current and future GRC Phase II proceedings, through the Routine True-Up Mechanism."[15]

In PG&E's current GRC Phase II proceeding, the parties have presented the Commission with a proposed settlement of the revenue allocation issues presented in that proceeding. The settlement includes creation of a new allocator specific to "Wildfire Mitigation" costs that would extend to "Wildfire Mitigation costs that are securitized and recovered through bonds (as provided by AB 1054)."[16] The proposed settlement reflects the parties' agreement that it is reasonable to apply the Wildfire Mitigation allocation to the securitization of Wildfire Mitigation costs.[17] Furthermore, the settlement provides for an annual reassessment of the "special allocator" for Wildfire Mitigation costs through the Annual Electric True-Up (AET) advice letter process.[18]

The parties were unable to reach agreement, however, on whether those annual reassessments should be used to update the allocation of the fixed recovery charges for securitized bonds. The default position under the GRC Phase II settlement is that, unless the Commission says otherwise in a securitization application proceeding, the reassessments in the AET to adjust the new

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[14] Reply of PG&E to Protests and Responses, p. 10-11.

[15] *Id*.

[16] Ex. PG&E-09 (Motion for Adoption of Revenue Allocation Settlement, with attached Settlement Agreement from A.19-11-019), Motion, p. 9, and Settlement Agreement, p. 9.

[17] *Id.*, Motion, p. 4.

[18] *Id.*, Motion, p. 10, and Settlement, p. 10.

Wildfire Mitigation allocator will not change the allocation for costs of securitized bonds.[19] But the pending settlement specifically preserves for determination in a securitization proceeding such as this one the question of whether the allocation method applicable to securitized costs could or should be adjusted over the remaining life of the bond.

> If the CPUC finds, in the securitization proceeding, that the revenue allocation method for the bonds can and should be adjusted after the initial allocation had been established when the bonds were issued, the RA Settling Parties recommend such future adjustment be limited to conforming to whatever applicable allocation method for Wildfire Mitigation costs might be adopted in future GRC Phase II proceedings, provided such changes meet all necessary requirements that may be imposed in the securitization proceeding to ensure that the change in allocation does not result in a downgrading of the outstanding securitization.[20]

PG&E has subsequently indicated that, absent a decision in a securitization application directing otherwise, it intends to change the scope of the updates it would regularly perform for securitization purposes. With the originally proposed Distribution Allocator the utility would have made regular updates for both sales and changes to the allocator that may result from future revenue allocation or rate design proceedings. For the Wildfire Mitigation allocator developed in the GRC Phase II settlement process, though, PG&E would only make updates for sales; the allocator itself would be fixed for the life of the bonds, no matter what happens in future revenue allocation or rate design proceedings.

The Commission should find that the Wildfire Mitigation allocator is to be updated as needed to remain consistent with the allocator that would have been used to establish the rates if these costs had not been securitized. PG&E's direct testimony makes clear that revising the

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[19] *Id.* ["The allocation weights associated with securitized bonds will not change based on such annual reassessments of the Special Allocator."]

[20] *Id.*, Motion, p. 11, and Settlement, p. 11 [emphasis added].

allocation percentages in order to remain consistent with future changes resulting from a PG&E revenue allocation or rate design proceeding was a not particularly controversial element of the regular updates to occur through the Routine True-Up Mechanism Advice Letters. Under the utility's original approach, the Commission could be confident that the allocation of the securitized costs would be consistent with the allocation of the non-securitized costs of a like nature. But if the updates for securitization purposes are limited to sales, the Commission could reasonably expect this to no longer be the case. That is, over the anticipated 25-year scheduled life of the bonds, the Wildfire Mitigation costs recovered through the fixed recovery charges would almost certainly end up allocated differently among customer classes than are the Wildfire Mitigation costs that were not securitized. TURN submits this makes no sense on its face.

Furthermore, the Commission should avoid attempting to lock in a cost allocation that would be in effect for a 25-year period unless it is absolutely required to do so. The record evidence does not establish any such requirement here. PG&E's securitization expert noted that utilities use "a number of approaches to allocate the securitization charges associated with the debt service and related ongoing transaction costs among customers," and that the allocation percentages established for each customer class "can be revised from time to time."[21] Providing for such updates to the Wildfire Mitigation allocator over the life of the bonds does not on its face present anything that would appear to be out of the range of ordinary for utility securitization transactions.

Finally, the Commission should limit its ceding of future ratemaking authority to only those elements for which such future forbearance is essential in order to achieve a securitized financing. By their nature, securitization transactions require the Commission to commit to certain practices and outcomes that will limit its own discretion for a period of decades. The Commission is

[21] Ex. PG&E-02 (PG&E Testimony), p. 2-11.

effectively tying its own hands and, more likely, the hands of future Commissioners on matters involving recovery of billions of dollars, and with rate and bill implications that will extend through the middle of this century. In light of this, the Commission should only adopt outcomes that limit its own discretion and authority where such outcomes are essential to the success of the transaction. Committing to non-bypassability over the entire life of the bonds would seem to be an essential outcome. Similarly, it would seem to be essential to commit now to a process for regular true-ups (both "routine" and "non-routine") intended to assure full recovery of the securitized amounts and associated costs of the bonds. But prohibiting the regularly-scheduled true-ups from including adjustments or changes to the Wildfire Mitigation allocator is <u>not</u> an essential element. The Commission should maintain its authority over this element of the securitization transaction, and retain the discretion to make appropriate adjustments or changes to the Wildfire Mitigation allocator, consistent with the allocation of similar costs that are recovered on a non-securitized basis over the decades to come.

6.2. The Commission Must Give Meaningful Effect To The CARE and FERA Exemption from Recovery Costs per Section 850.1, Rather Than Adopt PG&E's Proposal To Offset The Exemption with Increases to Other Rate or Bill Components.

PG&E proposes to implement the statutory exemption of CARE and FERA customers from bond-related charges by taking two steps that would, for all practical effects, render the exemption meaningless. There would be an adjustment on paper to make it appear that the exemption has been implemented for the bond charge, accompanied by another offsetting adjustment to eliminate any overall benefit from the exemption. In the end, under PG&E's approach the statutory exemption would be illusory at best. The Commission must reject PG&E's approach, and instead exempt CARE and FERA customers in a manner that actually delivers the intended benefit to those customers.

The "Initial AB 1054 Securitization" PG&E seeks in this application is proposed pursuant to AB 1054 and Sections 850(a)(2) and 850.1 of the Public Utilities Code.[22] Section 850.1(i) provides an exemption to lower-income residential customers from paying "recovery costs:"

> Recovery costs shall not be imposed upon customers participating in the California Alternate Rates for Energy or Family Electric Rate Assistance programs discount pursuant to Section 739.1.

"Recovery costs" as defined in Section 850 include the catastrophic wildfire costs recovered through a fixed charge under a Commission-issued financing order, and all associated taxes, financing costs, and other fees related to the financing order.[23] Thus, the very clear and unambiguous statutory language that pertains specifically to such a catastrophic wildfire-related financing order exempts CARE and FERA customers from bearing recovery costs.

PG&E proposes an approach that would, at best, create the appearance of compliance with the statutory exemption, while simultaneously making an offsetting adjustment that results in CARE and FERA customers realizing no benefit from the exemption. PG&E purports to exempt CARE and FERA customers from its proposed Wildfire Hardening Fixed Recovery Charge (WHFRC) in a manner consistent with Section 850.1(i): "Accordingly, all Direct Access, Community Choice Aggregation, and bundled service customers would pay the WHFRC and charges associated with the [WHFRC Balancing Account], unless they are participating in the CARE or FERA programs."[24] However, PG&E also would separately increase CARE charges "as necessary to retain the prescribed CARE percentage discount."[25] In light of Section 739.1(c)(1), which provides the

[22] Ex. PG&E-01 (PG&E Testimony, Chapter 1), p. 1-1.

[23] "Recovery costs" is defined in Section 850(b)(10).

[24] Ex. PG&E-06 (PG&E Testimony, Chapter 6), p. 6-1 [emphasis added].

[25] *Id.*, p. 6-5.

average effective CARE discount is not to exceed 35%, and PG&E's assertion that its average CARE discount is currently 35%, PG&E contends that the CARE exemption must be implemented in a manner that would result in a rate increase for CARE customers that is the same percentage as all non-CARE residential customers would experience.[26] PG&E's testimony states that similar treatment will be pursued for FERA customers, as the addition of the exemptions for the WHFRC and related costs will be accompanied by a reduction to the discount of distribution rates in order to maintain the total 18 percent discount under Section 739.12(b).[27]

The Commission should interpret Section 850.1(i) by applying the analysis it has used in previous decisions when called upon to engage in statutory construction.

> Statutory construction involves a three-step analysis. The Supreme Court of California has stated that to construe a statute, "we must 'ascertain the intent of the Legislature so as to effectuate the purpose of the law.' The words of the statute are a starting point …. [And] they should be given the meaning they bear in ordinary use. If the language is clear and unambiguous there is no need for construction nor is it necessary to resort to indicia of the intent of the Legislature." If the language is ambiguous or allows more than one reasonable interpretation, courts look to other extrinsic sources, including the ostensible objects to be achieved and the legislative history.[28]

The Commission should conclude that the language of Section 850.1(i) is clear and unambiguous: recovery costs "shall not be imposed" upon CARE or FERA customers. Such language does not accommodate PG&E's approach of indirectly imposing recovery costs on those customers by renaming them as distribution/CIA costs. If the CARE rate is increasing by 0.4%, the same percentage increase faced by non-CARE customers, the statutory exemption has been

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[26] *Id.*, and Ex. PG&E-08 (PG&E Exhibit 6.1-A), which shows a 0.4% rate increase for all residential customers, including CARE customers.

[27] Ex. PG&E-06 (PG&E Testimony, Chapter 6), p. 6-5.

[28] *See*, D.11-05-047 (in A.10-03-014 – PG&E GRC Phase 2 Decision Regarding Residential Rate Design), p. 25 (quoted material from *Wilcox v. Birtwhistle* (1999) 21 Cal. 4th, 973, 977 (internal citations omitted)).

rendered meaningless, even if the CARE increase is attributed to something other than the WHFRC and related costs.[29] In order to achieve an outcome consistent with the statutory prohibition on imposing such costs on CARE and FERA customers, the Commission must exempt them from paying such costs, no matter what label PG&E affixes to them.[30]

If the Commission concludes there is ambiguity in the language of Section 850.1(i) exempting CARE and FERA from bearing recovery costs, it should look to legislative intent for further guidance.

> Where a statute is theoretically capable of more than one construction we choose that which comports with the intent of the Legislature. [Citations.]… Words must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible. [Citations.] Interpretive constructions which render some words surplusage, defy common sense, or lead to mischief or absurdity, are to be avoided. [Citations omitted.] In the present instance both the legislative history of the statute and the wider historical circumstances of its enactment are legitimate and valuable aids in divining the statutory purpose. [Citations.][31]

Here, the Commission should look to the legislative history of Senate Bill (SB) 901, the 2018 legislation that first enacted Section 850.1. The Conference Report of August 28, 2018, makes several references to the Legislature's understanding that CARE and FERA customers would not pay for costs associated with a financing order securitizing wildfire-related costs:

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[29] Ex. PG&E-08 (PG&E Exhibit 6.1-A), pages 1 and 3.

[30] PG&E also seems to seek to extend this treatment to the "Recovery Bond Charge" that is the subject of a separate application (A.20-04-023). Ex. PG&E-06 (PG&E Testimony, Chapter 6), p. 6-7, fn. 10. This element of PG&E's request should be denied not only because it is inconsistent with Section 850.1(i), but because it is an inappropriate attempt by the utility to "bootstrap" into this proceeding an issue from A.20-04-023 that PG&E appears to have failed to identify or discuss in that proceeding.

[31] D.12-03-056 (denying rehearing in A.10-03-014 – PG&E GRC Phase 2 Decision Regarding Residential Rate Design), p. 9 (quoting *California Manufacturers Association v. Public Utilities Commission* (1979) 24 Cal. 3rd 836, 844).

> -- costs securitized under a financing order would be "payable by a nonbypassable charge on all distribution customers <u>except for those enrolled in the [CARE and FERA] programs</u>."
>
> -- costs of the securitized amount "would be reflected on bills as a non-bypassable charge. <u>CARE and FERA customers would be excluded from the charge</u>."
>
> -- "Upon a finding by the CPUC that the IOU acted reasonably, the CPUC would be authorized to order the financing of those costs which would then be paid by ratepayers via a non-bypassable charge. <u>CARE and FERA customers would be exempt</u>."[32]

PG&E's testimony relies on the language of Section 739.1(c) for the CARE discount, and Section 739.12(b) for the FERA discount to suggest that its proposed treatment is required under those statutes. Such an approach would "subordinate a later-in-time statute to an earlier-in-time statute – another conflict with the principles of statutory construction."[33] It also suggests the Legislature intended for the unrestricted exemption language that appears in Section 850.1(i) to potentially produce <u>no</u> effective exemption for CARE and FERA customers. The Legislature clearly intended that CARE and FERA customers would not pay higher rates or bills due to the fixed recovery charges that would result from a successful securitization and the associated financing order. PG&E's approach would have those customers paying higher rates and bills.

The Commission should reject PG&E's approach. Instead, it should conclude that the WHFRC and FRTA shall not be imposed on CARE and FERA customers, pursuant to Section 850.1(i), <u>and</u> that PG&E shall not make any corresponding increase to CARE or FERA charges or bills. Instead, the statutory exemption under Section 850.1(i) should be treated as incremental and

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[32] *Proposed Conference Report No. 1* – SB 901 (Dodd), August 28, 2018, pp. 4 and 7 [emphasis added]. The report is Attachment 1 to this brief.

[33] D.18-10-019 (in R.17-06-026 regarding the Power Charge Indifference Adjustment), p. 52 (citing *People v. Moody* (2002) 96 Cal.App. 4th 987, 993).

additive to the percentage figures set forth in Section 739.1(c) for CARE, and 739.12 for FERA.

7. Issue 6 – What are the required contents of a financing order?

TURN is not addressing this issue in this opening brief.

8. Issue 7 – What continued reporting compliance is required?

TURN is not addressing this issue in this opening brief.

9. Issue 8 – What are the appropriate procedures to establish for future such PG&E financing order applications, in compliance with Pub. Util. Code § 850.1(a)(1)(B)?

In the discussion of Issue 4 above (regarding achieving reduced consumer rates to the maximum extent possible), TURN recommended PG&E be required to make a more detailed showing in future financing order applications should it again seek to include construction work in progress (CWIP) as part of the capital expenditures it seeks to securitize. If the Commission finds that including CWIP is permitted under Section 8386.3(e), it should adopt TURN's recommendation for a more detailed showing as part of the appropriate procedures for future PG&E financing order applications.

10. Issue 9 – What adjustments should be made to PG&E's 2020 GRC revenue requirements, and how should those adjustments be reflected in the calculation of customer savings?

PG&E's testimony describes adjustments that will need to be made to its 2020 GRC revenue requirement if its securitization proposal is approved. Some of the adjustments will be relatively straightforward, such as reversing the depreciation expense that has been recorded since January 1, 2020, and ensuring that the securitized plant earns a return at the authorized debt rate only through the date of issuance of the recovery bonds, and no return for PG&E thereafter.[34] Other adjustments, however, may be harder to follow for parties and Commission staff less schooled on tax-related ratemaking practices. PG&E refers to the "reversal of all tax depreciation and deferred income

[34] Ex. PG&E-05 (PG&E Testimony, Chapter 5), p. 5-5.

taxes … [and of] Flow through of tax repairs and subsequent tax flow back" associated with the now-securitized capital expenditures.[35] For the latter adjustment, the utility will need to reverse any "repair deduction" that had previously been recorded for those capital assets, a process that will require adjustments to "flow-through" and "flow-back" that had been previously treated as part of the GRC revenue requirement, but now would be included as part of the securitized revenue requirement.[36] PG&E calculates this adjustment will produce a $128 million credit in 2022 to the securitized revenue requirement;[37] TURN is unaware of any record evidence indicating the amount of the corresponding adjustment to the GRC revenue requirement.

PG&E proposes to include its bond-related GRC revenue requirement adjustments as part of its Annual Electric True-up (AET) advice letter, which typically includes a variety of adjustments to the utility's authorized revenue requirement from the operation of dozens of memorandum and balancing accounts.[38] TURN recommends that the Commission direct the utility to instead submit a separate Tier 3 advice letter for such adjustments. The need for interested parties and, ultimately, the Commission to be able to effectively review and understand adjustments related to "flow-through" and "flow-back" tax ratemaking adjustments that could lead to a substantial near-term increase of the test year 2020 GRC revenue requirement warrants more focused attention and the greater opportunity for party input that comes with a Tier 3 advice letter as compared to the AET filing.[39] PG&E objected to this proposal, effectively contending that its testimony already presents sufficient detail regarding these transactions such that merely reporting the results in the AET

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[35] *Id.*

[36] Ex. PG&E-04 (PG&E Testimony, Chapter 4), pp. 4-3 to 4-4.

[37] Ex. PG&E-01 (PG&E Testimony, Chapter 1), Exhibit 1.3, line 11.

[38] PG&E Application, p. 25.

[39] TURN Protest, pp. 8-9.

should satisfy any need for further review.[40] TURN submits that the cited testimony is, at best, a summary description of tax ratemaking adjustments that even experienced intervenors and regulatory staff may either find hard to follow, or require a refresher ratemaking course in order to fully understand. The Commission would be better served by enabling the fuller and more focused review that could take place through a Tier 3 advice letter devoted specifically to explaining and justifying the proposed adjustments.

Date: April 23, 2021

Respectfully submitted,

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[40] PG&E Reply to Protests, p. 9.

ATTACHMENT 1

***Proposed Conference Report No. 1* – SB 901 (Dodd), August 28, 2018**

PROPOSED CONFERENCE REPORT NO. 1 - August 28, 2018
SB 901 (Dodd)
As Proposed August 28, 2018
Majority vote

SENATE:	(July 5, 2018)	ASSEMBLY:	(July 5, 2018)
(vote not relevant)		(vote not relevant)	

SENATE CONFERENCE VOTE: 3-1

Ayes: Dodd, Jackson, Stone

Noes: Cannella

ASSEMBLY CONFERENCE VOTE: 4-0

Ayes: Holden, Reyes, Dahle, Wood

Noes:

Original Committee Reference: **U. & E.**

SUMMARY: Establishes a comprehensive framework to address and prevent catastrophic wildfires including prevention and planning by the state's electric utilities, management of the state's forests, chaparrals, and other lands to prevent and defend against wildfires, and standards to stabilize electrical corporations (IOUs) in the event of extensive liability resulting from claims under inverse condemnation. Specifically, **the conference committee report includes**:

1) Utility Fire Prevention and Planning

   a) Expands the filing requirements of IOU wildfire mitigation plans to include: protocols for deenergizing electric lines; addressing risk drivers; actions to make the system safe, reliable and resilient including undergrounding, insulation of wires, and pole replacement; public comment and review of the plans; cost review; CALFIRE review; and an independent evaluation of the IOU's subsequent compliance with the plan;

   b) Authorizes the California Public Utilities Commission (CPUC) to assess penalties on an IOU that fails to substantially comply with approved wildfire mitigation plans;

   c) Requires a safety culture assessment of each IOU;

   d) Requires the CPUC and CALFIRE to develop consistent approaches and data sharing related to fire prevention, safety, vegetation management, and energy distribution systems; and

   e) Requires all local publicly owned utilities to review the necessity of wildfire mitigation plans and consider specified measures, as necessary, for strengthening the plans.

2) Forestry and Landscape Management

   a) Requires any conservation easement that includes forestland, is purchased with state funds on or after January 1, 2019, and does not conflict with other specified laws, include an agreement to maintain and improve forest health through the promotion of a more natural tree density, species, composition, structure, and habitat function; and

b) Requires, before July 1, 2020, the Office of Planning and Research to update the guidance document entitled "Fire Hazard Planning General Plan Technical Advice Series".

c) Requires the Air Resources Board, in consultation with the Department of Forestry and Fire Protection, to develop all of the following:

   i) A standardized system to quantifying the direct carbon emissions and decay from the fuel reduction activities for purposes of meeting the accounting requirements for the Greenhouse Gas Reduction Fund (GGRF) expenditures. Authorizes the standardized approach to include standardized lookup tables by forest stand type;

   ii) A historic baseline of greenhouse gas (GHG) emissions from California's natural fire regime, reflecting conditions before modern fire suppression, on or before December 31, 2020; and,

   iii) A report every five years that assesses GHG emissions associated with wildfire and forest management activities.

d) Requires CALFIRE to create the Wildfire Resilience Program (Program). Specifies the purpose of the Program is to assist nonindustrial timberland owners with wildfire resilience efforts by providing technical assistance on multiple topics including how to maintain the benefits of fuel treatment projects. Requires CALFIRE to make the following information available:

   i) A list of permits needed from state entities to conduct various types of fuel removal projects;

   ii) Concise information detailing research and current best practices for wildfire resilience;

   iii) A list of grant opportunities statewide which allow for wildfire resilience activities; and,

   iv) The details of grants made by CALFIRE relating to wildfire resilience activities.

e) Expands the Board of Forestry's (Board) fire safety standards to very high fire hazard severity (VHFHS) zones for residential, commercial, and industrial building construction approved after July 1, 2021.

f) Requires the Board, on and after July 1, 2021, to periodically update regulations for fuel breaks and greenbelts near communities to provide greater fire safety for the perimeters to all residential, commercial, and industrial building construction within the state responsibility area and VHFHS zones after July 1, 2021. Requires these regulations to include measures to preserve undeveloped ridgelines to reduce fire risk and improve fire protection.

g) Requires the Board to develop criteria and maintain a "Fire Risk Adapted Community" list of local agencies that meet best practices for local fire planning. Prioritizes local agencies on the list for CALFIRE's local assistance fire prevention grants.

h) Exempts from the definition of "timber operations" logs or lumber removed for a fuel break being created by, or in partnership with, a public agency or a nonprofit organization that has received a grant from CALFIRE for vegetation management or fuel reduction.

i) Requires, on or before July 1, 2020 the Forest Management Task Force to report to the Legislature on opportunities to streamline the Z'berg-Nejedly Forest Practice Act of 1973 to expedite forest health projects and fire prevention projects.

j) Creates an exemption known as the Small Timberland Owner Exemption. Specifies the removal of trees is to eliminate the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuel break. Requires the Small Timberland Owner Exemption to meet the following conditions:

   i) Prohibits harvesting of genus quercus (Oak) larger than 26 inches at stump height;

   ii) Prohibits harvesting of trees larger than 32 inches at stump height;

   iii) Prohibits the removal of the six largest trees per acre of the exemption;

   iv) Requires the exemption is only used once on any given acre every 10 years;

   v) Prohibits the use of even-aged silviculture for the ten-year period or use of other specified exemptions;

   vi) Specifies the small forestland owner must own 60 acres or less in the coastal forest district or 100 acres or less within the northern forest district or the southern forest district of timberland within a single planning watershed; and,

   vii) Limits landowner's use of the exemption to three times.

   viii) Sunsets the Small Timberland Owner Exemption five years after the effective date of emergency regulations.

k) Creates the Forest Fire Prevention Exemption which allows two miles of temporary roads on slopes up to 30% per ownership in a single planning watershed for any five-year period. Limits the diameter of trees allowable for removal from 26 inches to less than 30 inches outside a road prism and 36 inches in a road prism. Sunsets the Forest Fire Prevention Exemption five years after the effective date of emergency regulations.

l) Authorizes multiple landowners to submit a single nonindustrial timber management plan or a working forest landowner plan.

m) Allows, until January 1, 2023, prescribed fire, thinning, or fuel reduction projects undertaken on federal lands to reduce the risk of high-severity wildfire that had been reviewed under the federal National Environmental Policy Act (NEPA), from the California Environmental Quality Act. This allowance is contingent on the Secretary of the Natural Resources Agency certifying on or before January 1 of each year that NEPA has not been substantially amended on or after August 31, 2018.

n) Expands eligible fuels and feedstocks from forest materials for 125 megawatts of biomass facilities in the state under five year procurement contracts, modifies the monthly and annual fuel reporting requirements for those facilities, and requires an offer to extend current biomass contracts for an additional five years if those plants follow fuelstock requirements and are not in severe or extreme non-attainment areas.

3) Forestry, Fire, and Carbon Reduction Funding

   a) Requires $165 million from the GGRF to be continuously appropriated to CALFIRE for healthy forest and fire prevention programs and projects to improve forest health and reduce GHG emissions from uncontrolled wildfires.

   b) Requires $35 million from the GGRF to be continuously appropriated to CALFIRE to complete prescribed fire and other fuel reduction projects through proven forestry practices consistent with the recommendation of the Forest Carbon Plan including the operation of year-round prescribed fire crews and implementation of a research and monitoring program for climate change adaptation.

4) Wildfire Cost Review

   a) Permits an IOU to file with the CPUC an application for recovery of costs and expenses incurred as a result of catastrophic wildfires occurring after January 1, 2019; establishes a new standard of review to be used by the CPUC to determine whether those costs are just and reasonable; and authorizes, but does not require, the CPUC to order financing for costs and expenses deemed just and reasonable to be secured by a nonbypassable charge on distribution customers.

   b) Permits an IOU to file with the CPUC an application for recovery of costs and expenses incurred as a result of catastrophic wildfires occurring in 2017, requires a determination of the IOU's ability to pay those costs without harming ratepayers, and caps the shareholder responsibility to avoid utility instability. After a review of the just and reasonableness of those costs under current law by the CPUC, an IOU may apply for a financing order to securitize the costs and expenses allocated as just and reasonable or as disallowed for recovery but exceeding the cap, payable by a nonbypassable charge on all distribution customers except for those enrolled in the California Alternate Rates for Energy (CARE) and Family Electric Rate Assistance (FERA) programs.

5) Increases the maximum penalty that can be assessed by the CPUC on a public utility for failing to comply with the law, or its negligence, from $50,000 for each offense to $100,000 for each offense.

6) Revises the Budget Act of 2018 to apply $25 million for the pre-positioning California Office of Emergency Services fire and rescue and local government resources.

7) Establishes the Commission on Catastrophic Wildfire Cost and Recovery to assess the issues surrounding catastrophic wildfire costs and damages and make recommendations to the Legislature and Governor in 2019 for statutory changes that would ensure equitable distribution of costs among affected parties.

8) Prohibits any expenditure of utility ratepayer funds for salaries, bonuses benefits or other consideration for IOU officers.

9) Restricts the use of private fire safety personnel under contract with an IOU to the direct defense of utility infrastructure and maintenance activities and requires the utility to make an effort to contract with skilled and apprenticed personnel.

10) Requires that the CPUC ensure a stable workforce for a safe, reliable electric and gas utility service in the event of a material change in ownership of an IOU or any filing seeking bankruptcy protection.

FISCAL EFFECT: Unknown.

COMMENT:

Wildfire Devastation. The 2017 California wildfire season was the most destructive wildfire season on record, and saw multiple wildfires burning across California, including five of the 20 most destructive wildland/urban interface fires in the state's history. Devastating fires raged in Santa Rosa, Los Angeles, and Ventura, and the Thomas Fire proved to be the largest wildfire in California history. Sadly, the tragedies and devastation have continued to break records in 2018. In July the Governor reported that more land had already burned in California in the first six months of this year than during the same period last year. Specifically, CALFIRE had fought more than 53,000 acres of wildfire this year as compared to an average of 23,000 acres over the same time in previous years. These numbers do not include this year's summer fires throughout the state which included the Carr, Mendocino Complex, Ferguson, and Cranston.

As part of the Legislature's ongoing efforts to enhance wildfire prevention and the impacts of those events, the Wildfire Preparedness and Response Conference Committee was appointed. The resulting report addresses myriad issues with a core focus on prevention to reduce wildfires and the electric utility and ratepayer impacts associated with wildfires. The conference committee framework makes comprehensive changes to strengthen fire prevention activities such as vegetation removal, infrastructure maintenance, and utility company inspections.

Forestry and Landscape Management. During 2017 and 2018 California experienced the largest fires ever recorded in its history. In 2017, over 1.3 million acres burned in high-severity wildfires and over 10,000 structures were destroyed. California has also experienced a tree mortality crisis exacerbating historic fire suppression efforts that have allowed fuels to build up in forested lands. There are at least 129 million dead trees in the state. Since 2015, more than 1.2 million dead trees have been removed from the state's forests. Governor Brown issued Executive Order (E.O.) B-52-18 to combat dangerous tree mortality, increase the ability of our forests to capture carbon and systematically improve forest management.

Key elements of the E.O. include:

1) Doubling the land actively managed through vegetation thinning, controlled fires and reforestation from 250,000 acres to 500,000 acres;

2) Launching new training and certification programs to help promote forest health through prescribed burning;

3) Boosting education and outreach to landowners on the most effective ways to reduce vegetation and other forest-fire fuel sources on private lands;

4) Streamlining permitting for landowner-initiated projects that improve forest health and reduce forest-fire fuels on their properties;

5) Supporting the innovative use of forest products by the building industry; and,

6) Expanding grants, training and other incentives to improve watersheds.

The forestry and landscape management portion of this bill makes various changes to increase active management of private and federal lands to reduce fire risk. This bill will require when the state purchases development rights to conserve forest lands that those lands are actively managed. These changes will increase the pace and scale of acres treated and makes meaningful progress toward the Governor's Executive Order's goals.

Small landowners will be given technical assistance and regulatory relief to conduct fuel treatments on their lands. Specified fuel reduction projects on federal lands where the state provides funding or staff, using the good neighbor authority, will only be required to complete NEPA instead of both CEQA and NEPA. Landowners will be able to work together to develop lifetime timber harvest permits to manage their land for the long term.

The Board of Forestry will be given additional responsibility to regulate land use for fire safety in high fire risk areas. Local agencies that engage in fire safety planning best practices will be prioritized for CALFIRE local assistance fire prevention grants.

Finally, this bill provides consistent funding to CALFIRE for fire prevention, forest health, and fuel reduction activities. Many of these provisions contain sunsets and reporting requirements. The Legislature should carefully review the effect of these statutory changes and investments to provide appropriate oversight and consider modifications in the future if deemed necessary.

Utility Stabilization and Ratepayer Protection. The conference committee framework makes comprehensive changes to strengthen fire prevention activities of electric utilities such as vegetation removal, infrastructure maintenance, and utility company inspections. The committee called for electric utilities to develop more expansive and detailed wildfire and emergency preparedness plans to prevent the ignition of fires as a result of utility infrastructure and plan for the temporary shut off of power during extreme weather to prevent ignition of fires by the electric distribution network.

The loss of life and destruction of property as a result of the 2017 fires was staggering. Many of those fires are thought to have been ignited by electric utility infrastructure. If ongoing investigations bear this out, under the judicial doctrine of inverse condemnation, IOUs stand to be strictly liable for property losses in the billions of dollars. The utilities report that this risk of financial liability has destabilized the utilities in the market and increased the cost of doing business. Bond ratings have fallen, financing costs have risen, and electric ratepayers will pay the costs.

The conference committee has addressed ratepayer impacts by revising rules and procedures for the CPUC's review of utility applications for cost recovery related to wildfire liability costs. For the 2017 fires, utilities could file an application for cost recovery under the current standard of review, commonly referred to as the "prudent manager standard." A stress test would be done to determine the maximum liability a utility could bear before ratepayer harm (e.g. the cost of and ability to do business). Utility costs would be capped at that level; ratepayers would be responsible for any amounts above that cap which would be financed (securitized), and the costs would be reflected on bills as a non-bypassable charge. CARE and FERA customers would be excluded from the charge.

Going forward, this report establishes a new and additional standard of review that applies strictly to electrical IOU applications for recovery of costs related to catastrophic wildfires caused by electrical infrastructure occurring in 2019 and beyond. In evaluating whether cost recovery is just and reasonable, a new standard of review is established. The CPUC will consider specified factors related to reasonableness such as proper maintenance, but is also directed to consider extreme weather conditions including humidity, temperature, and winds. Upon a finding by the CPUC that the IOU acted reasonably, the CPUC would be authorized to order the financing of those costs which would be paid by ratepayers via a non-bypassable charge. CARE and FERA customers would be exempt.

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